Unreportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.389/2002

DATE OF DECISION : 17.07.2007

IN THE MATTER OF :
M/s. Verdhaman Associates .....Appellant
Thru. Mr. R.K. Jain, Adv.

– **Versus** -

M/s. Bharat Lamination & Another .....Respondents
Thru. NEMO

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MS.JUSTICE ARUNA SURESH

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. The appellant was the plaintiff in the proceedings instituted by it vide suit No. 638/1993 wherein it claimed a decree of Rs.2,45,000/- against the defendants/respondents herein. It comprised the principal amount of Rs.1,69,860.40ps for the goods supplied to the defendants and also Rs.75,160/- on account of interest on that amount for delayed period.

2. As per the averments made in the plaint, the appellant is a registered partnership firm dealing in papers. The defendant/respondent used to purchase material from the appellant between 9.10.1997 and 14.5.1998 and certain amounts were paid by the defendant which were credited leaving a balance of Rs.1,69,860.40ps. The defendant had also issued a cheque dated 28.2.1998 for Rs.35,000/- which had been dishonoured.

3. The respondent had filed the written statement as per which supply of the goods were not disputed. Even the amount for which these goods were supplied was not disputed. They had also admitted part payment as well as issuance of cheque of Rs.35,000/- which had been dishonoured. However, the defence of the respondent was that certain defective goods were returned to the appellant and therefore, they were not liable to make payment of those defective goods which had been returned. In this manner they even preferred counter claim but did not pay any court fee thereon.

4. On the basis of these pleadings, five issues were made

which are as under:-

1. Whether the goods purchased vide bill No. 371 dt. 21.1.1988 were returned by the draft to the plaintiff? If so, to what effect?

2. Whether the defendant is liable to pay court fees on the counter claim set up in Para No.5 of the WS?

3. Whether the claim of the defendant is within time?

4. To what amount the plaintiff is entitled to claim?

5. Relief.

5. In so far as issues No. 2 and 3 are concerned, the defendant counsel conceded that the claim of the appellant herein was not time barred. He also stated that since court fee was not paid, the defendant was withdrawing the counter claim. On the basis of this statement of the defendant's counsel given on 26.10.1995, two issues were disposed of and decided in favour of the plaintiff and against the defendant.

6. Evidence was led on the other issues and thereafter, arguments were heard. Vide impugned judgment the trial court decided Issue No. 1 in favour of the appellant herein holding that the goods were purchased by the defendant

vide bill No. 21.1.1998.

7. However, while deciding the Issue No.4 the Court took up the question as to whether the appellant firm was a registered partnership or not and held that for want of proof regarding registration the plaintiff was not entitled to institute the suit, and therefore, not entitled to recover any amount as well and decided Issue No.4 against the appellant. Consequentially, the suit was dismissed vide judgment dated 20.1.2002 against which present appeal is preferred.

8. Notice in this appeal was issued, however, nobody appeared on behalf of the respondent, and therefore, the respondent was proceeded exparte. We have heard learned counsel for the appellant and have perused the record.

9. In the plaint, the plaintiff' has specifically averred that it is a registered partnership firm. There is no denial of this by the defendant. Even no issue was framed on this aspect as is clear from the five issues which were framed and reproduced above.

10. Under issue No.4, the learned ADJ was to decide as to what amount the plaintiff was entitled to. While considering this issue, the court below took up the issue as to whether the plaintiff was registered partnership firm or not and held that since there was nothing on record to show that it was a registered firm and the finding was given that it was not entitled to file the suit. In the absence of pleading on this aspect and when no issue was even framed, the Court could not have dealt with this aspect. Even if the trial court was of the opinion that it was necessary for the appellant to show that it was a registered firm, it should have put the plaintiff to notice and given an opportunity to prove the same.

11. As mentioned above, the appellant had specifically stated that it was a registered firm which was not denied by the respondent in the written statement. The respondent, therefore, did not dispute that the appellant was not a registered firm and, therefore, no such issue was framed.

12. There is another significant development thereafter. After framing the issues, the defendants had filed an application for framing an additional issue under Order 14

Rule 5. However this application was dismissed by the learned trial court vide order dated 5.2.2007 observing as under:-

> "In view of the contents of Para 1 in the W.S. There is no denial and simple denial or general denial does not constituted any denial in that regard and on the other hand a simple or general denial amounts to admission u/o 8 Rule 5 CPC which provides that every allegation of facts the plain, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant shall be taken to be admitted except as against a person under disability. Therefore there is no denial and on the other hand this is admission of the part of the facts alleged in plaint in para No.1 in the absence of any denial in that regard and once the deft. Had recorded his admission in that regard u/o 8 Rule 5 CPC no issue was raised and framed in that regard and accordingly the appl. filed by the deft. at a such belated stage is absolutely with no merit or substance and on the other hand is nothing devide to delay the proceedings unnecessarily so that same is dismissed with costs Rs.1,000/-"

13. After refusing to frame issues at the instance of the defendant on the ground that general denial on the part of the defendant amounted to admission, the same Judge within 15 days thereafter, while deciding the case finally, took somersault and took contrary view on the ground that the appellant had not led any evidence and dismissed the

suit of the appellant even when he had refused to frame an issue on this aspect. Such a conclusion recorded by the learned Court below is not only contrary to its own order dated 5.2.2007, it is even other wise unsustainable in law. The impugned judgment is accordingly set aside and this appeal is allowed. The case is remanded back to the learned trial court to decide Issue No.4 on merits.

14. Trial court record be sent back.

No costs.

(A.K. SIKRI)
JUDGE

July 17, 2007

(ARUNA SURESH)
JUDGE